petroleum" should, in their personal opinion, include gas, the lower Court found that *scientists* use the term to embrace hydrocarbon solids, liquids and gas and that natural gas is therefore a part of "crude petroleum" (*Finding* 22, R. 32). This is in the face of the mass of evidence referred to above at pages 13-15, and in the face of its own finding that "crude petroleum" as used by the operators and dealers in the industry (*Finding* 18, R. 29), and as used in the standard industry authority, in statutes and in government publications (*Finding* 19, R. 30), is synonymous with crude oil.

III.

The Economic Consequences of the Decision Below Call for Review.

Natural gasoline is generally regarded as a product of natural gas.[24] And so it is in fact. *Finding* 14 (R. 28-29). Consequently, it is essential to a decision holding the pipe line transportation of natural gasoline to be taxable that the term "crude petroleum" as used in the statute be defined to include natural gas. This would mean that the pipe line transportation of natural gas is also taxable. For the statute taxes "crude petroleum"—it does not say "liquid crude petroleum". That his definition of crude petroleum would mean that natural gas is also taxable was admitted by respondent's principal witness (R. 416).

Although the provision of the statute here in question is now nearly ten years old, no one has ever before contended that it applies to natural gas. The legislative history of the section involved is squarely contrary to such an interpretation.[25] *And the Bureau of Internal Revenue has never so applied it* (R. 616-617). Thus the decision below upsets a settled construction of the tax law and will have serious economic consequences.

[24] *Finding* 18, second paragraph (R. 30). See also R. 114, 238, 291, 296, 302-303, 306, 546-547, 594-595, 602.

[25] *Infra*, pp. 21-24.

The natural gas industry has grown to giant size. In 1939 nearly two and a half trillion cubic feet of natural gas were consumed in this country. The total value of this gas at points of consumption was $533,721,000 for the year, and the domestic users alone numbered nearly nine million for the year. Its commercial and industrial uses are manifold and have spread throughout the country.[26]

Virtually all transportation of natural gas is by pipe line. It could not be transported any other way.

An excise tax of the sort here dealt with is quite like a sales tax. Its effects fall not on the transporter alone, but also on the consumer—consequences which lead statesmen to view such a form of taxation with antagonism and caution.[27]

Thus, with respect to a form of taxation particularly acute in its economic consequences, the decision below leads to the imposition of a tax upon an exceedingly important industry. The Bureau's stand for ten years has been otherwise, and the Court's decision should not now prevail without appellate review.

IV.

The Decision Below Violates an Indispensable Principle of Statutory Interpretation.

The lower Court in its process of statutory interpretation has radically departed from the decisions of this Court.

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[26] Lott and Hopkins, *Natural Gas* (Govt. Printing Office, 1941) pp. 1029-1031 (taken from Bureau of Mines MINERAL YEAR BOOK REVIEW OF 1940). So important has the industry become that Congress in 1938 adopted "A Natural Gas Act" (52 Stat. 821; 15 U. S. C. § 717), declaring that the business of transporting and selling natural gas is affected with a public interest, and imposing extensive regulation under the jurisdiction of the Federal Power Commission.

[27] See HEARINGS BEFORE HOUSE COMMITTEE ON WAYS AND MEANS ON REVENUE REVISION 1938, 75TH CONG. 3D SESS., pp. 70, 108. It is of interest to observe that during the debate in the House on the section of the law here involved the point was strongly made that the pipe line company would shift the burden of the tax to the consumer and producer. 75 CONG. REC. 7228.

Not only in the light of the evidence, but in the light of its own findings, it has taken an alleged academic, scientific definition of the statute's words and adopted it in the face of the admitted general understanding of the terms in the industry to the contrary. It would be difficult, indeed, to find a clearer violation of the test set forth by Mr. Justice Cardozo in *Hale* v. *State Board of Assessment and Review*, 302 U. S. 95 (1937), at p. 101:

> "Our search is for something more than the meaning of a property tax or an excise in the thought of skilled economists or masters of finance. It is for the meaning that at a particular time and place and in the setting of a particular statute might reasonably have acceptance by men of common understanding."

Unless judicial interpretation is to be in accordance with common understanding among those affected, tax liability will become hopelessly confused. Increasingly our Revenue Acts must speak in the language of the market place. Unfortunately, however, such language may be susceptible to adroit manipulation by the expert witness according to alleged scientific and technological theories which neither the courts nor the run of men affected understand. Therefore it is of particular importance that such language be given the commonly understood meaning. For once the courts cast loose from the objective test set forth in the *Hale* case—and in so many others [28]—neither the tax officials nor the taxpayers can know where they stand. That the lower Court has laid aside the accepted standard for determining a statute's meaning is apparent from its findings.[29] And when one goes behind those findings to the

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[28] *De Ganay* v. *Lederer*, 250 U. S. 376, 381 (1919); *Old Colony R. Co.* v. *Commissioner*, 284 U. S. 552, 560 (1932); *Deputy* v. *du Pont*, 308 U. S. 488, 498 (1940); *Robertson* v. *Salomon*, 130 U. S. 412, 414-415 (1889); *Two Hundred Chests of Tea*, 22 U. S. 428, 437 (1824); *cf. Burke* v. *Southern Pacific R. Co.*, 234 U. S. 669, 678-679 (1914).

[29] *Supra*, pp. 5, 18.

evidence, one discovers the aptest illustration of the evil such a decision breeds. For the decision below places a premium on efforts to explain away and contradict commonly accepted meanings by a clever exercise in constructing "scientific" glossaries.

V.

Further Errors in the Lower Court's Decision Call for Correction.

The importance of the Court of Claims is manifest. Especially with respect to tax law, its decisions are becoming of controlling importance to the Government and to the taxpayers. Since its work is subject to the healthy check of appellate scrutiny only in this Court, it should be reviewed when it errs as gravely as it has in the following respects:

A. *The Lower Court Misapplied and Misinterpreted Legislative History.*

Not in its findings, but in its opinion, the lower Court invokes legislative history. It errs in doing so, for the language of the statute is not ambiguous.[30] "Crude petroleum" is not and never was ambiguous to anyone in the industry.

The Court concludes from the legislative history that Congress intended "to tax pipe line transportation" (R. 38). This sweeping conclusion gleans far more than that history discloses. In fact, the history contradicts the Court. Here it is:[31]

The Revenue Act of 1918, in section 500 (e) (40 Stat. 1057, 1102), taxed the transportation of "oil" by pipe line.

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[30] *United States* v. *Shreveport Grain & Elevator Co.*, 287 U. S. 77 (1932); *Van Camp & Son* v. *American Can Co.*, 278 U. S. 245 (1929).

[31] The relevant portions are set forth verbatim in the Appendix hereto.

"Oil" was defined in a Regulation to mean "crude petroleum and such of its products as may be transported by pipe line".[32]

The Revenue Act of 1932, as introduced and as reported by the House Committee, did not contain the section here involved. The section first appeared as a committee amendment proposed by Congressman Crisp, then acting Chairman of the Ways and Means Committee, who was in charge of committee amendments. As thus proposed, and as adopted by the House, the section was virtually identical with section 500 (e) of the 1918 Act. Indeed, it was described as "taken from the Act of 1918".[33] In the House debates there occurred the following colloquy with Congressman Crisp:

> "*Mr. Glover. Does this amendment affect the carrying of natural gas through pipe lines?*
>
> "*Mr. Crisp. No; it does not.*
>
> "*Mr. Glover.* Does the gentleman intend to offer any amendment to that effect?
>
> "*Mr. Crisp.* The gentleman's colleague is the chairman of this subcommittee and his colleague, the chairman of the subcommittee, together with his associates, recommended this amendment to the full committee, and the full committee approved it. That subcommittee is still in existence and may make other recommendations. However, I cannot be sure what they are going to do."[34]

Neither Congressman Crisp nor others made further recommendations on the subject.

Consequently, it was abundantly clear that natural gas was not to be taxed. It was intended simply to revive the 1918 Act.

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[32] Art. 91, TREAS. REGS. 49 (Revised 1921), as promulgated under Revenue Act of 1918.

[33] 75 CONG. REC. 7228.

[34] 75 CONG. REC. 7226.

However, the 1918 Act mentioned only "oil". It did not mention "products". As already noted, it was in the Regulation that "oil" was defined to mean "crude petroleum and such of its products as may be transported by pipe line". *Thus "oil" and "crude petroleum" were treated as synonymous.* But, naturally, there would have been some question whether the Regulation was right in holding that "oil" or "crude petroleum" included the products thereof, such as gasoline, and the same question would, of course, have arisen under the House version of the 1932 Act.[35]

Hence when the 1932 Act reached the Senate Committee, section 731 (a) was amended to its present form by paraphrasing the Regulation under the 1918 Act, with the explanation that:

> "• • • this will make transportation of gasoline *as well as crude oil* taxable." (Italics ours.)[36]

Certainly this shows clearly enough that crude petroleum and crude oil are synonymous.

In conference the House accepted the Senate amendment.[37]

Thus, throughout, Congress was dealing with crude oil, not natural gas. Starting with the wording of the 1918 Act in an amendment prepared after the bill was first reported, the Senate Committee simply effected the intention expressed in the House to revive the 1918 Act by more carefully adapting the legislation to the language of the 1918 Regulation, treated "crude petroleum" as synonymous with "crude oil", as had the 1918 Regulation, and made clear that liquid products thereof—specifically nam-

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[35] *Cf. Miller* v. *Standard Nut Margarine Co.*, 284 U. S. 498, 508 (1932).

[36] SEN. REP. No. 665, 72ND CONG., 1ST SESS., p. 47.

[37] H. REP. No. 1492, 72ND CONG., 1ST SESS., p. 26.

ing gasoline—would be included, as provided in the 1918 Regulation.

This history completely negates the lower Court's finding that natural *gas* or *its* products come within the statute.

Perhaps the lower Court was impressed with the Senate Committee's statement that "gasoline" was to be included in the tax. Another court, in a recent case similar to the present, emphasized that the Senate Committee's statement referred to gasoline and then said that casinghead gasoline (a form of natural gasoline) is gasoline.[38] But natural gasoline is not gasoline. It is a very different substance. (See *supra*, pp. 3-4.) *This same Court of Claims in March of last year held most emphatically that the word "gasoline" in sec. 617 of the same Revenue Act of 1932 means gasoline and does not include natural gasoline, and that no one would so regard it.*[39] Congress didn't think it was taxing natural gasoline.[40] What it thought and said was simply that it was taxing crude oil and its liquid products, such as gasoline.

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[38] *General Petroleum Corp.* v. *United States*, 24 F. Supp. 285, 288 (S. D., Calif., 1938).

[39] *Coleman* v. *United States*, 37 F. Supp. 273 (1941). The court said at p. 276: "We do not think any court would hold that if a purchaser ordered a quantity of gasoline the seller could fill that order by supplying casinghead or natural gasoline, which could not be used for the same purpose as gasoline. In fact, we think the meaning of the order would be so plain that no seller would attempt to do anything of that kind • • • The term 'gasoline' as ordinarily understood would not include casinghead or natural gasoline, which in its usual sense would have a quite different meaning."

[40] When Congress has meant to tax natural gasoline it has said so in terms. Thus, sec. 617 of the Revenue Act of 1932, referred to above, was amended in the Revenue Act of 1934 so as to include, specifically, "casinghead and natural gasoline". This amendment, and its effect as an indication that when Congress refers only to "gasoline" it does not mean "natural gasoline", are discussed in the *Coleman* case, *supra* n. 39, 37 F. Supp. at p. 277. So in sec. 605 (a) of the Revenue Act of 1934, already discussed, *supra*, p. 15, n. 20, natural gasoline was specially provided for.

B. *The Lower Court's Findings Are Not Supported by the Evidence.*

After the decision of this Court in *United States* v. *Esnault-Pelterie*, 303 U. S. 26 (1938), when the United States found itself unable to have a review of the sufficiency of evidence to support the findings of the Court of Claims, the Attorney General requested both House and Senate to amend the Judiciary Act so that such a question could be reviewed.[41] Congress complied.

While the decision below is inconsistent with its own findings, the lower Court commits equally great error in adopting a definition of "crude petroleum" on the basis of speculative and unsupported assertions by respondent's witnesses in the face of overwhelming evidence that both popularly and scientifically "crude petroleum" is never used to include natural gas. The gravity of this error is magnified by the bald admission by each of respondent's witnesses that he rarely, if ever, heard or saw the term used. Such is exactly the kind of error for which, at the request of the Attorney General, Congress provided review by this Court.

C. *The Lower Court Ignored an Essential Issue.*

The lower Court made *no ultimate findings* regarding butane. Butane is scarcely mentioned even in its primary findings. See *Finding* 16 (R. 29). And in its opinion it actually says that natural gasoline presents the sole issue in the case. Plainly it has erred by failing to make necessary findings and by entering judgment unsupported by findings. *Universal Battery Co.* v. *United States*, 281 U. S. 580, 584 (1930).

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[41] HOUSE REP. No. 495, 76TH CONG., 1ST SESS., p. 2.

VI.

Conclusion.

The question involved is of real economic importance. Moreover, the nature of the errors committed, involving sharp departures from settled principles, call for review in the interest of orderly and just administration of the revenue laws. Despite the absence of a conflict of decisions upon the precise issue, the Petition should be granted, as petitions were under similar circumstances in *United States* v. *Cowden Manufacturing Co.*, 312 U. S. 34 (1941); *Helvering* v. *Kehoe*, 309 U. S. 277 (1940); *Morgan* v. *Commissioner*, 309 U. S. 78 (1940); and *Paramount Publix Corp.* v. *American Tri-Ergon Corp.*, 294 U. S. 464 (1935).

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